IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 469 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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GULAMNABI HUSAINMIYA SHAIKH

Versus

KANJIBHAI NATHABHAI PARMAR

Appearance:

1. Civil Revision Application No. 469 of 1983

MR KC SHAH for Petitioner No. 1

MR NR OZA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/07/2002

ORAL JUDGEMENT

This is a revision application under section 29 of the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947 challenging the judgment and decree of the two courts below directing the petitioner to hand

over vacant possession of the tenanted property to the respondent.

2. Respondent no.1 is the landlord, the petitioner is original defendant No.1 and respondent no.2 is original defendant no.2. The first respondent instituted a civil suit being Rent Suit No.1016 of 1976 before the learned Judge of the Small Causes Court, Vadodara for posession of a rented property on various grounds. After hearing the parties, the learned trial Judge found that the present petitioner and respondent no.2 were tenants in arrears of rent for exceeding six months and that they negotiated to pay rent then due within one month of receipt of demand notice under section 12(2) of the Act. Despite service of notice and, therefore, they were liable to be evicted. The learned trial Judge also found that the first respondent was also entitled to decree of possession since unlawful sub-letting also has been proved.

3. The petitioner and respondent no.2, being aggrieved by the said judgement and decree of the trial court, preferred Civil Appeal no.371/80 before the District Court, Vadodara. The learned Third Extra Assistant Judge, Vadodara, heard the appeal and dismissed the same by judgment and decree dated 12.11.1982. It may be recorded that the learned Assistant Judge found that the landlord-plaintiff had not proved the ground of non-payment of arrears of rent but he also recorded a finding that the defendant no.1 had ununlawfully sublet, transferred or assigned in interest the suit premises to defendant no.2, and, therefore, the present petitioner as well as respondent no.2 were liable to be evicted from the tenanted property.

4. Feeling aggrieved by the aforesaid two judgments and decrees of the two courts below, the petitioner-original defendant no.1 has preferred this revision application. It has been contended here that the learned trial Judge as well as the learned Appellate Judge have committed serious illegality in passing the decree against the weight of evidence on record. Therefore, the judgment and decree of the two courts below are erroneous and deserve to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed and the judgment and decrees of the two courts below may be ordered to be set aside.

5. After hearing the learned Advocates for the parties, Rule was issued in this Revision Application and

Mr N R Oza, learned advocate appeared on behalf of the first respondent. Respondent no.2 was served and nobody appeared on his behalf. At the hearing, learned Advocate for the petitioner Mr K C Shah, has argued the matter on behalf of the petitioner and Mr Suthar, learned Advocate appeared on behalf of Mr NK Majmudar for respondent no.1. None has appeared for respondent no.2. During the course of the argument, learned Advocate for the petitioner tried to assail the judgments and decrees of the two courts below. However, the two courts below have recorded concurrent findings of fact about unlawful subletting and there is no reason to differ from the view adopted by the two courts below. This is after all a Court of revision and the scope of powers and jurisdiction of this court is very limited. It would be very difficult to take a view different from the view taken by the courts below on the finding of fact. The learned Advocate for the petitioner has not been able to point out any illegality being committed by the courts below. There is no reason to interfere with those findings of facts recorded by the two courts below. In that view of the matter, there is no merit in the present revision and accordiingly it is required to be dismissed.

6. For the foregoing reasons, this revision application is dismissed. The judgments and decrees of the two courts below are ordered to be confirmed. Rule discharged. Interim relief sands vacated. No order as to costs.

17.7.02 [D P Buch, J.]
msp